

United Truck and Bus Service Co. and Rhode Island General Council on Behalf of Local Union 1033, Laborers' International Union of North America, AFL-CIO, Petitioner. Case 1-RC-16315

July 29, 1981

DECISION AND ORDER DISMISSING PETITION

Following a second election held October 11, 1979, the Regional Director for Region 1 on March 13, 1980, issued his Report on Challenged Ballots and Second Report on Objections. Thereafter, the Employer timely filed exceptions to the Regional Director's report.

On July 18, 1980, while the Employer's exceptions were pending before the Board, the Employer filed with the Board a "Motion to Dismiss Representation Petition" on the ground that Local Union 1033 is not a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended. The Employer averred that the president of Local Union 1033 has sworn under oath at a hearing before the National Labor Relations Board in a different matter that "Local 1033 is not a labor organization as defined in the Act," that Local 1033 has no members who are "employees as defined in the Act," that "people employed by private employers" are not "eligible for membership in Local 1033," and that the organization that was trying to organize the drivers of the Employer and that filed the petition herein was not Local 1033. The Employer further averred that under the charter, bylaws, local rules, and constitution of Local 1033 it lacks the authority to organize employees of private employers such as the Employer.

On August 11, 1980, the Board issued a Notice To Show Cause why the Board should not accept the Employer's submissions as accurate, and, if accepted, should not deem them a sufficient basis to grant the Employer's motion and dismiss the instant representation petition.

On August 25, 1980, the Petitioner filed a response to the Notice To Show Cause wherein it asserts that it is a labor organization as defined in the Act and it denies that the president of Local Union 1033 made the statements as asserted in the Employer's motion, under oath or otherwise.

Thereafter, on September 10, 1980, the Board issued an order directing the Regional Director for Region 1 to conduct a further hearing to resolve the issues raised by the Employer's motion. Such further hearing was conducted on October 22 and November 6, 1980.¹

¹ Contrary to Petitioner's denials in its response to the Board's Notice To Show Cause, Local Union 1033 conceded at the further hearing

On December 19, 1980, Hearing Officer Irwin P. Weiner issued the attached report (omitted from publication) in this proceeding finding, *inter alia*, that the Petitioner is a labor organization and recommending that the Board dismiss the Employer's motion. Thereafter, the Employer filed exceptions with supporting argument.

The Board has considered the record and the attached report in light of the exceptions and argument and has decided to adopt the rulings and findings of the Hearing Officer only to the extent consistent herewith.

The designation of the Petitioner on the petition filed herein is "Rhode Island General Council on behalf of Local Union 1033, Laborers' International Union of North America, AFL-CIO." By definition, this designation indicates that the Rhode Island General Council, whose status as a labor organization is not disputed,² filed the petition herein as an agent for Local Union 1033. Thus, should it be determined that a majority of the Employer's employees voted to be represented by the Petitioner, it is Local Union 1033, and not the Rhode Island General Council, which would be certified as their exclusive collective-bargaining representative.³ Under these circumstances, we find, in agreement with the Employer, that it is the status of Local Union 1033 as a labor organization which is pivotal to the resolution of this matter.

Section 2(5) of the National Labor Relations Act, as amended, sets forth two criteria which an organization must meet in order to constitute a

herein that the testimony of its president at the hearing in the matter referred to in the Employer's motion was "accurate and true." See fn. 3, *infra*.

² The Rhode Island General Council is a District Council chartered by the Laborers' International Union of North America, AFL-CIO.

³ In this regard, we note that there is substantial evidence in the record indicating that this was not the intention of Local Union 1033 or the Rhode Island General Council. Although the campaign materials distributed by the Petitioner indicated that a "yes" vote was a vote for Local Union 1033, Joseph Virgilio, president of Local Union 1033, vice president of the Rhode Island General Council, and an International representative of the Laborers' International Union of North America, AFL-CIO, testified under oath at a hearing before the Board in a different matter that Local Union 1033 was listed on the petition herein "solely for identity purposes" because "we didn't feel that anyone knew what the Rhode Island General Council was or who it was or what kind of organization it is." Virgilio further testified that the Rhode Island General Council had a "plan," if Local Union 1033 won the election and was certified by the Board, to create a new local union to represent school bus drivers who are private employees and simply "put" the Employer's employees in that local union.

Although it is proper for one labor organization to file a petition on behalf of an after-formed organization (see, e.g., *Sherold Crystals, Inc.*, 104 NLRB 1072 (1953)), this is not what occurred here. Rather, the Rhode Island General Council filed a petition on behalf of an *existing* local union and led the Employer's employees to believe that that union would be their representative, while maintaining a secret "plan" to substitute a different local union for that certified by the Board. While we find this to be an intentional deception played on the Employer's employees, in view of our disposition of this matter we find it unnecessary at this time to take any action.

labor organization: (1) the organization must be one "*in which employees participate*" and (2) the organization must exist "for the purpose, in whole or in part, of *dealing with employers* concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (Emphasis supplied.) For the reasons stated below, we find that Local Union 1033 satisfies neither of these criteria and thus is not a labor organization as defined in our Act.

Article III, section 1(a), of the constitution of Local Union 1033 provides that "[i]n order to be eligible for membership [in Local Union 1033] a person *must be working at the calling* within the territory of [Local Union 1033]." (Emphasis supplied.) In this context, the "calling" of Local Union 1033 is synonymous with its craft jurisdiction as chartered by the Laborers' International Union of North America, AFL-CIO. The charter of Local Union 1033 describes its craft jurisdiction as being "public employees," or, in other words, employees of public employers.

It is well settled that public employers are not "employers" as defined in Section 2(2) of the Act and that the employees of such employers are not "employees" as defined in Section 2(3) of the Act. Since eligibility for membership in Local Union

1033 is expressly limited to public employees, it is clear that Local Union 1033 is *not* an organization in which employees, as defined in the Act, participate. Furthermore, since the membership of Local Union 1033 is limited to persons employed by public employers, Local Union 1033 does not exist for the purpose of dealing in any manner with employers as defined in the Act. Under these circumstances, we conclude that Local Union 1033, Laborers' International Union of North America, AFL-CIO, is not a labor organization as defined in Section 2(5) of the Act.⁴ Accordingly, we will grant the Employer's motion and dismiss the petition filed herein.

ORDER

It is hereby ordered that the petition herein filed by Rhode Island General Council on behalf of Local Union 1033, Laborers' International Union of North America, AFL-CIO, be, and it hereby is, dismissed with prejudice.

⁴ Cf. *Gino Morena, d/b/a Gino Morena Enterprises*, 181 NLRB 808 (1970), wherein the Board found that the provisions of petitioner's constitution did not restrict membership exclusively to government employees and thus petitioner's willingness to function as a bargaining agent under the Act was controlling.